

Denial of Unemployment Benefits for Seasonal Workers

• Information for Employers •

A NEW LAW GIVES OPTIONS TO SEASONAL EMPLOYEES

The *Michigan Employment Security Act* now denies unemployment benefits under Michigan law between seasons, to some seasonal workers (other than those in construction) if the employer has given those workers a reasonable assurance of returning to work next season. (The employer must still pay unemployment taxes on the wages paid to seasonal workers, though.)

An employer wishing to take advantage of the new law must **apply to the Unemployment Insurance Agency (UIA) for designation as a seasonal employer and must also give certain notices to their seasonal workers.**

THE EMPLOYER MUST APPLY TO THE UIA FOR DESIGNATION AS SEASONAL

To receive an application form call **1-800-638-3994** or go on-line to our website at: www.michigan.gov/uia. The application must be returned to the UIA not less than 20 days before the expected beginning of the season.

UIA MUST DETERMINE WHETHER AN EMPLOYER IS DESIGNATED SEASONAL

The UIA will review the employer's application and will issue a **Determination** notifying the employer of its decision. If the Determination grants the employer seasonal designation, the Determination will also indicate the employer's **normal seasonal work period**, based on information supplied by the employer on the application.

To be designated by the UIA as a *seasonal employer*, the employer must offer work in *seasonal employment*.

To be seasonal employment, the work must be in an *industry* that does either of the following:

- Customarily operates during regular seasons of not more than 26 weeks within a period of 52 consecutive weeks, or
- Customarily employs at least 50% of its employees during regular seasons of not more than 26 weeks within a period of 52 consecutive weeks.

In addition, the employer's business must, itself, operate seasonally, as described above.

THE EMPLOYER MUST PROVIDE CERTAIN NOTICES TO SEASONAL WORKERS

For a denial period to be applicable to an employer's seasonal workers, the employer must have provided workers with certain "notices" required by law. The employer must have:

- Posted notice to workers, at the time of the employer's **application** for seasonal designation, the the application has been made;
- Posted notice to workers, once the UIA has **determined** the employer to be seasonal, of:
 - the designation, and
 - the beginning and ending dates of the **normal seasonal work period**, and
 - the fact that **retroactive benefits** may be payable to a worker for the period between seasons if the work assured for the next season does not materialize and if the worker timely applies for the benefits;
- Written notice to each worker at the time of the worker's status as a **seasonal worker**, and written notice to the worker of any later changes in that status;
- **Reasonable assurance** to the worker that work will be available in the next season.

WHAT IS REASONABLE ASSURANCE?

Reasonable assurance is not a guarantee of employment; it is an employer's "good faith" statement of intent that work will be available for the seasonal worker for the next season. The work should be comparable to the previous work in skills required and location, and in rate of pay and benefits.

BENEFITS ARE DENIED TO WORKERS UNEMPLOYED OUTSIDE THE NORMAL SEASONAL WORK PERIOD

In the application form for seasonal designation, the employer is asked to give the beginning and ending dates for the last 5 completed seasons. The employer may then specify a *normal seasonal work period* of up to 26 weeks. The normal seasonal work period must fall within the period from the earliest beginning to the latest ending dates of the last 5 seasons. If the employer does not specify a period, the UIA will assign a period within the 5-year beginning and ending dates.

A *seasonal worker* is the one who is paid wages by a seasonal employer for work performed only during the normal seasonal work period. If the worker either begins working before the start of an employer's normal season work period, or finishes working after the end of the employer's normal seasonal work period, the worker does not satisfy the definition of *seasonal worker* and would not be subject to the seasonal denial period for that year.

If a worker was offered reasonable assurance of returning to work the next season, but then the work does not materialize, the unemployed worker can collect unemployment benefits during the new season. Also, if the employer never makes work available in the new season and the worker applied for unemployment benefits and certified for benefits during the period between seasons, the worker can collect retroactive benefits for the period between seasons.